

## Department of the Army, DoD

## § 536.30

(v) Decedent's general physical and mental condition at time of death.

(vi) Itemized bills or receipt for medical and burial expenses.

(vii) If damages for pain and suffering are claimed, a physician's statement specifying the injuries suffered, duration of pain and suffering, drugs administered and decedent's physical condition between time of injury and time of death.

(2) The information listed below (similar to that required by 28 CFR 14.4(b)) will be submitted by a claimant to substantiate a personal injury claim.

(i) Written report by attending the physician or dentist setting forth the:

(A) Nature and extent of injury;

(B) Nature and extent of treatment;

(C) Degree of temporary or permanent disability;

(D) Prognosis;

(E) Period of hospitalization; and

(F) Diminished earning capacity.

(ii) Itemized bills or receipts for medical, dental and hospital expenses.

(iii) If the prognosis includes future treatment, a statement of expected expenses for such treatment.

(iv) If the claim includes lost time from employment, a statement by the employer showing the actual time lost and wages and/or salary lost.

(v) If the claim includes lost income by a self-employed claimant, documentary evidence of such loss.

(c) *Measure of damages in injury or death claims arising in foreign countries.*

(1) Subject to the limitations in § 636.29e, where an injury, or injury resulting in death arises in a foreign country, the measure of damages will be determined in accordance with established principles of general maritime law (see generally, *Moragne v. United States Lines, Inc.*, 398 U.S. 375 (1970), as interpreted by Federal Court decisions). Where general maritime law provides no interpretation of allowable damages under a particular theory of liability (e.g., wrongful birth), damages will be determined in accordance with general principles of United States tort law.

(2) The information listed in § 536.29(b) (1) and (2), as appropriate, will be submitted by the claimant to substantiate a claim.

(3) A claimant who suffers serious personal injury, resulting in temporary or permanent disability should be examined by an independent physician or other medical specialist (See § 536.8(b)).

(d) *Failure to substantiate a claim.* (1) The government is not obligated to take final action on a claim until it has been supported by the claimant with specific facts substantiated by appropriate documentary evidence, reports of investigation, medical records or witness statements. Upon request, the claimant must:

(i) Provide the documentation required by paragraphs (a), (b) and (c) of this section;

(ii) Undergo necessary medical examinations;

(iii) Permit questioning of the claimant, his or her witness, and treating medical personnel;

(iv) Submit an expert opinion in a professional negligence action.

(2) Failure to comply with these requirements may provide a basis for denial of a claim, in full or in part.

(e) *Damages not payable.* The following damages are not payable in any claim arising under the Military Claims Act:

(1) Punitive or exemplary damages, including damages punitive in nature under 28 U.S.C. 2674.

(2) Interest on any claim settlement.

### § 536.30 Structured settlements.

(a) The use of the structured settlement device by approval and settlement authorities is encouraged in all appropriate cases. A structured settlement should not be used when contrary to the desires of the claimant.

(b) Notwithstanding the above, the Commander, USARCS may require or recommend to higher authority that an acceptable structured settlement be made a condition of award notwithstanding objection by the claimant or his or her representative where—

(1) Necessary to ensure adequate and secure care and compensation to a minor or otherwise incompetent claimant over a period of years;

(2) Where a trust device is necessary to ensure the long-term availability of funds for anticipated further medical care;

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(3) Where the injured party's life expectancy cannot be reasonably determined.

### § 536.31 Claims over \$100,000.

Claims cognizable under 10 U.S.C. 2733 and §§ 536.20 through 536.35, which are meritorious in amounts in excess of \$100,000, will be forwarded to the Commander, USARCS who will negotiate a settlement subject to approval by the Secretary of the Army or designee, or require the claimant to state the lowest amount that will be acceptable and provide appropriate justification. Tender of a final offer by the Commander, USARCS constitutes an action subject to appeal. The Commander, USARCS will prepare a memorandum of law with recommendations and forward the claim to the Secretary of the Army, or designee, for final action. The Secretary or designee will either disapprove the claim or approve it in whole or in part.

### § 536.32 Settlement procedures.

(a) *Procedures.* Approval and settlement authorities will follow the procedures set forth in §§ 536.1 through 536.13 in paying, denying or making final offers on claims. A copy of the notification will be forwarded to Commander, USARCS. The settlement authority will notify the claimant by certified mail (return receipt registered) of a denial or final action and the reason therefore. The letter of notification will inform the claimant of the following:

(1) He or she may appeal, and that no form is prescribed for the appeal.

(2) The title of the authority who will act on the appeal and that the appeal will be addressed to the settlement authority who last acted on the claim.

(3) The claimant must fully set forth the grounds for appeal, or state that he or she appeals on the basis of the record as it exists at the time of denial or final offer.

(4) The appeal must be postmarked not later than 60 days after receipt of notice of action on the claim. If the 60th day falls on a day on which the post office is closed, the next day on which it is open for business will be considered the final day of the appeal period. The 60 day appeal period starts

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on the day following claimant's receipt of the letter from the settlement authority informing the claimant of the action taken and of the appellant rights. For good cause shown, the Commander, USARCS, or designee, or the chief of a command claims service (if the appellate authority), may extend the time for appeal, but normally such extension will not exceed 90 days.

(5) Where a claim for the same injury has been filed under the FTCA and the denial or final offer applies equally to such claim, the letter of notification must advise the claimant that any suit brought as to any portion of the claim under the FTCA must be brought not later than 6 months from the date of mailing of the notice of denial or final offer. Further, the claimant must be advised that if suit is brought, action on any appeal will be held in abeyance pending final determination of such suit.

(b) *Action on appeal.* (1) The appeal will be examined by the settlement authority who last acted on the claim, or his or her successor, to determine if the appeal complies with the requirements of this section. The settlement authority will also examine the claims investigative file and decide whether additional investigation is required; ensure all allegations or evidence presented by the claimant, agent or attorney are documented in the file; and that all pertinent evidence is included in the file. If the claimant states that he or she appeals but does not submit supporting materials within the 60 day appeal period or an approved extension thereof, the appeal will be treated as being on the record as it existed at the time of denial or final offer. Unless action under paragraph (b)(2) of this section is taken; the claim with complete investigative file including any additional investigation required and a memorandum of opinion will be forwarded to the appropriate appellate authority for necessary action on the appeal.

(2) If the evidence in the file, including information submitted by the claimant with the appeal and any necessary additional investigation, indicates that the appeal should be granted, in whole or in part, the settlement authority who last acted on the claim